

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

IN THE MATTER OF THE WINDING DOWN OF:

THE NEW HAMPSHIRE MEDICAL MALPRACTICE  
JOINT UNDERWRITING ASSOCIATION

No. 217-2015-CV-00347

**RECEIVER'S REQUEST FOR APPROVAL OF  
HARDSHIP GRANT DETERMINATIONS AS OF APRIL 9, 2019**

Pursuant to RSA 404-C:16, III, and the NHMMJUA Hardship Grant Process approved by the Court on October 1, 2015, John R. Elias, Insurance Commissioner of the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), hereby requests that the Court approve the Receiver's determinations on two recent applications for hardship grants.

1. As set forth in the Receiver's Motion for Approval of Hardship Grant Application Process dated September 16, 2015, the Act regarding the dissolution of the NHMMJUA, 2015 Laws 263 ("Act"), required the Receiver to allocate a portion of NHMMJUA surplus to establish a hardship fund to be available for hardship grants to NHMMJUA policyholders as of July 20, 2015 who suffer significant economic hardship when moving to the private insurance market. RSA 404-C:16, III. The Receiver accordingly established a hardship fund on the books of the NHMMJUA and requested the Court's approval of a hardship grant application form and application process. The Court issued the Order Approving Hardship Grant Application Process on October 1, 2015. That Order approved the NHMMJUA Hardship Grant Process and the NHMMJUA Hardship Grant Application attached to the Receiver's motion.

2. To obtain a hardship grant under the Act, an applicant must show that the applicant (a) is a midwife certified under RSA 326-D or another health care provider licensed or approved by the State with an “in-force policy with the NHMMJUA as of the effective date of this section [July 20, 2015],” and (b) will suffer “significant adverse economic hardship as a result of an increase of at least 25% in the cost of medical malpractice coverage” from the premium charged for the most recent NHMMJUA coverage. RSA 404-C:16, III. The Act specifies that any grant “shall not exceed the difference between the cost of insurance through the NHMMJUA plus 25% and the premium charged in the private market for the most comparable coverage available.” RSA 404-C:16, III. These requirements are incorporated in the NHMMJUA Hardship Grant Process approved October 1, 2015, a copy of which is attached as Exhibit A.

3. The Receiver has previously sought and received approval of his determinations regarding applications for hardship grants, and the Court has issued orders approving determinations on May 20, 2016, March 29, 2017, March 12, 2018, and February 22, 2019.

4. The Receiver has recently received applications for hardship grants from two new applicants. For the reasons described below, the Receiver has determined to deny those applications.

5. The first application was from Mary Lawlor. Ms. Lawlor is a certified midwife approved by the State who had an in-force medical malpractice policy with the NHMMJUA as of July 20, 2015. However, she did not show she will suffer significant adverse economic hardship “as a result of an increase of at least 25% in the cost of medical malpractice coverage” from the premium charged for the 2015 NHMMJUA coverage as required by RSA 404-C:16, III. On July 20, 2015, Ms. Lawlor had individual coverage with the NHMMJUA. The NHMMJUA

Renewal Certificate submitted with her application showed that the NHMMJUA provided “Individual Professional Liability Coverage” and that she had “No Employees.” The certificates and declarations pages for insurance coverage with other insurers for post-2015 periods submitted with the application identify the insured as “Monadnock Birth Center, LLC” and specify that the policies include coverage for between two and five certified midwives instead of one. In none of the years 2016 to 2019 covered by the application did the per-certified midwife premium for Monadnock Birth Center exceed Ms. Lawlor’s 2015 individual NHMMJUA premium, let alone that premium plus 25%. Accordingly, the Receiver concluded that the statutorily required increase in insurance premium of at least 25% was not present and determined to deny the application.

6. The Receiver emailed a letter to Ms. Lawlor on March 21, 2015 explaining the Receiver’s determination and requesting any additional information she cared to submit. The Receiver has not received any response.

7. The second application was from Adrian Feldhusen. Ms. Feldhusen is a certified midwife approved by the State. However, she did not have an in-force medical malpractice policy with the NHMMJUA as of July 20, 2015. While she had a NHMMJUA policy in January 2015, her application shows that she replaced that coverage with a policy with another insurer effective on March 25, 2015. Ms. Feldhusen’s NHMMJUA policy (and the NHMMJUA policy of another midwife that she apparently employed) was cancelled in March 25, 2015. Accordingly, the Receiver concluded that Ms. Feldhusen did not have in-force medical malpractice insurance coverage with the NHMMJUA on the July 20, 2015 effective date of the statute as required for a hardship grant by RSA 404-C:16, III and determined to deny the applications for grants for 2015 to 2019. (The Receiver also noted concerns over whether the

applications met the 25% increase of premium criterion, but this would only become an issue if Ms. Feldhusen had NHMMJUA coverage on July 20, 2015.)

8. The Receiver emailed a letter to Ms. Feldhusen on April 4, 2019 explaining the Receiver's determination and requesting any additional information she cared to submit. Ms. Feldhusen responded on April 4, 2015 stating that the termination of her coverage in March 2015 was not voluntary and advancing arguments about the 25% increase of premium issue. Even if the termination were not voluntary, however, in the absence of NHMMJUA in-force coverage on July 20, 2015, Ms. Feldhusen does not meet the statutory eligibility criteria for a hardship grant. The Receiver responded to Ms. Feldhusen on this point on April 9, 2019.

9. The Receiver's recommendations concerning the applications are set forth on the attached Exhibit B.

10. In accordance with the Paragraph 6 of the Hardship Grant Process, a copy of this Request for Approval is being mailed to the applicants. As provided in that paragraph, any applicant who disagrees with a recommended determination has the right to file an objection with the Court within ten days of the filing of this request for approval.

11. In accordance with Paragraph 5 of the Hardship Grant Process, the Receiver reports that the hardship fund balance is \$1,950,395 as of February 28, 2019.

12. Once the Court has acted upon this request for approval of hardship grant determinations, the Receiver will file a motion to transfer the hardship fund balance to Endowment for Health, Inc., in accordance with the Order Approving Charitable Organization to Receive Transfer of Remaining Hardship Fund dated October 16, 2018.

WHEREFORE, the Receiver requests that the Court approve the recommended hardship grant determinations as set forth on Exhibit B.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE COMMISSIONER OF  
THE STATE OF NEW HAMPSHIRE, SOLELY AS  
RECEIVER OF THE NEW HAMPSHIRE MEDICAL  
MALPRACTICE JOINT UNDERWRITING  
ASSOCIATION

By his attorneys,

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April 11, 2019

**Certificate of Service**

I hereby certify that a copy of the foregoing Receiver's Request for Approval of Hardship Grant Determinations as of April 9, 2019, and the proposed order was sent this 11th day of April, 2019, by first class mail, postage prepaid to all persons on the attached service list and the applicants.



Eric A. Smith  
NH Bar ID No. 16952

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No. 217-2015-CV-00347

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**Applicants:<sup>i</sup>**

Ms. Adrian E. Feldhusen  
4 Prospect Street  
Milford, NH 03055

Ms. Mary Lawlor  
907 W. Swanzey Road  
Swanzey, NH 03446

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<sup>i</sup> For this filing only

## EXHIBIT A

### NHMMJUA HARDSHIP GRANT PROCESS

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Receiver ("Receiver") of the New Hampshire Medical Malpractice Joint Underwriting Association ("NHMMJUA"), has allocated \$2,000,000 of surplus to a hardship fund as required by RSA 404-C:16, III. The hardship fund is available for hardship grants to certain NHMMJUA policyholders as provided in RSA 404-C:16, III.

1. Midwives certified under RSA 326-D and other health care providers who are licensed or approved by the State of New Hampshire who have in-force policies with the NHMMJUA on July 20, 2015 may apply to the Receiver for hardship grants using the attached NHMMJUA Hardship Grant Application Form. Applicants shall submit the completed Application, including the required attachments, to the NHMMJUA's Receiver at Receiver, NHMMJUA, C/O Hays Companies, 133 Federal Street, Boston, MA 02110 (or Fax: 617-723-5155).

2. To be eligible for a hardship grant, the applicant must be a midwife certified under RSA 326-D and or another health care provider licensed or approved by the State of New Hampshire with an in-force medical malpractice policy with the NHMMJUA as of July 20, 2015. The Application Form requests this information.

3. To receive a hardship grant, the applicant must show that the applicant has or will suffer significant adverse economic hardship as a result of an increase of at least 25% in the cost of medical malpractice coverage. This requires that the applicant show (a) an increase of at least 25% in the cost of medical malpractice coverage as compared to the cost of coverage from the NHMMJUA as of July 20, 2015, and (b) significant adverse economic hardship from the increase. To demonstrate such an increase, the applicant shall submit a binding quote for medical malpractice coverage from an insurer in the New Hampshire private market that is comparable to the applicant's coverage with the NHMMJUA as of July 20, 2015. To show economic hardship from the increase, the applicant shall provide the percentage of its annual revenue (gross revenue before expenses) that would be spent on the replacement medical malpractice coverage and an explanation of how the increase will cause significant economic hardship. The Application Form requests this information.

4. The Receiver shall review applications after they are received. If an application form is incomplete, or if the Receiver needs additional information, the Receiver may request that the applicant provide additional information to complete the application.

5. The Receiver shall determine whether each applicant is an eligible provider as described in paragraph 2 and has suffered significant adverse economic hardship from an increase in cost of at least 25% as described in paragraph 3. If the applicant is an eligible provider suffering the requisite significant adverse economic hardship, the Receiver shall determine the amount of any hardship grant. As provided in

RSA 404-C:16, III, any grant provided shall not exceed the difference between the cost of insurance through the NHMMJUA plus 25% and the premium charged in the private market for the most comparable coverage available. If the applicant is not an eligible provider or if the applicant has not demonstrated that the increase in premium will cause significant economic hardship, the Receiver shall deny the application. In all instances, the Receiver shall notify the applicant of the determination and that the Receiver will seek approval of the determination from the Court with notice to the applicant.

6. The Receiver shall request approval of all determinations from the Court. The Receiver may submit determinations to the Court in groups as he deems practical and appropriate. Each request shall provide the total amount of prior hardship grants, the total of hardship grants recommended in the request, and the remaining hardship fund balance. The Receiver shall serve a copy of the request for approval of the determination on the applicant by mail and shall provide notice that the applicant may object to the determination by filing an objection with the Court within ten days of the date the request for approval is filed with the Court. The Court shall be the final arbiter of all determinations.

7. The Receiver shall administer the hardship fund until it is exhausted or until the termination of the receivership, whichever occurs first. Each grant shall be for a one-year period, and recipients may be eligible for further grants in subsequent years if the hardship fund is still in effect. If in light of the number and amounts of grants requested by eligible applicants the Receiver anticipates that the hardship fund will be exhausted, the Receiver shall promptly report to the Court with recommendations. If funds remain in the hardship fund as the end of the receivership approaches, the Receiver shall seek the approval of the Court for the transfer of any remaining funds to a charitable organization that promotes aid to health care providers servicing medically underserved populations in accordance with RSA 404-C:16, III.

# EXHIBIT B

## RECEIVER'S RECOMMENDED NHMMJUA HARDSHIP GRANT DETERMINATIONS AS OF APRIL 9, 2019

<u>Applicant</u>	<u>Eligibility</u>	<u>Grant Amount</u>
Ms. Adrian E. Feldhusen 4 Prospect Street Milford, NH 03055	Not Eligible (licensed provider who did not have in-force medical malpractice policy with NHMMJUA on July 20, 2015)	\$0
Ms. Mary Lawlor 907 W. Swanzy Road Swanzy, NH 03446	Not Eligible (licensed provider whose comparable annual premium for medical malpractice coverage has not increased by more than 25%)	\$0